



INSPECTOR GENERAL

Department of Defense

MAY 29, 2013

Complaint Regarding Tinker Air Force Base Agreement to Pay an Unallowable Markup on a Foreign Military Sales Contract



INTEGRITY ★ EFFICIENCY ★ ACCOUNTABILITY ★ EXCELLENCE

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Results in Brief

Results in Brief: Complaint Regarding Tinker Air Force Base Agreement to Pay an Unallowable Markup on a Foreign Military Sales Contract

May 29, 2013

Objective

We reviewed a complaint alleging that a Tinker Air Force Base contracting officer agreed to pay a 22-percent unallowable markup on a foreign military sales contract. The 22-percent markup issue involves a Foreign Military Sales base contract that was negotiated in 2004, and option years that were negotiated in 2006 and 2007. Although the contract was negotiated several years ago, we elected to review the complaint and make appropriate recommendations because Tinker Air Force Base could be allowing similar unallowable costs on current DoD and Foreign Military Sales contracts.

Findings

A Tinker Air Force Base contracting officer inappropriately agreed to pay a 22-percent markup factor on materials transferred between affiliated contractors. As a result, a contractor received an estimated \$18.3 million in additional profit under the foreign military sales contract that was unallowable. According to Federal Acquisition Regulation 31.205-26 (e), "Material Costs," materials transferred between affiliated companies must be based on costs incurred, excluding profit. The contracting officer allowed the markup factor even though a Defense Contract Audit Agency auditor and a Defense Contract Management Agency attorney recommended that the contracting officer disallow it. The contracting officer failed to adequately explain in the price negotiation memorandum why he did not adopt the auditor and attorney recommendations.

Recommendations

We recommend the Deputy Assistant Secretary for Contracting, Office of the Assistant Secretary of the Air Force for Acquisition improve the quality assurance procedures to help ensure that Tinker Air Force Base contracting officers 1) limit negotiated material costs transferred to the costs incurred, 2) document adequate rationale in the price negotiation memorandum when they do not adopt the specialist recommendations, and 3) take all practicable steps to obtain recoupment of the \$18.3 million profit that the contracting officer had no authority to pay the DoD contractor.

Comments

The Deputy Assistant Secretary for Contracting agreed with the findings and the planned actions met the intent of the recommendations. Therefore, no additional management comments are required.

Recommendations Table

Management	Recommendations Requiring Comment	No Additional Comments Required
Deputy Assistant Secretary for Contracting, Office of the Assistant Secretary of the Air Force for Acquisition		1, 2, 3, 4, and 5



**INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500**

May 29, 2013

MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY FOR CONTRACTING,
OFFICE OF THE ASSISTANT SECRETARY OF THE AIR
FORCE FOR ACQUISITION
DIRECTOR, DEFENSE CONTRACT MANAGEMENT AGENCY
DIRECTOR, DEFENSE CONTRACT AUDIT AGENCY

SUBJECT: Complaint Regarding Tinker Air Force Base Agreement to Pay an Unallowable
Markup on a Foreign Military Sales Contract
(Report No. DODIG-2013-086)

We are providing this report for your information and use. We substantiated a complaint that a Tinker Air Force Base contracting officer inappropriately agreed to pay a 22-percent markup on a foreign military sales contract. As a result, a contractor received \$18.3 million in additional profit that was unallowable under Federal Acquisition Regulation 31.205-26(e), "Material Costs." The Air Force agreed to make improvements to its quality assurance procedures to prevent similar reoccurrences.

DoD Directive 7650.3 requires that recommendations be resolved promptly. We considered management comments on the draft of this report. The management comments conformed to the requirements of DoD 7650.3; therefore, additional comments are not required.

We appreciate the courtesies extended to our staff. Questions should be directed to Ms. Carolyn R. Davis at (703) 604-8760 (DSN 664-8760), carolyn.davis@dodig.mil.

Randolph R. Stone
Deputy Inspector General
Policy and Oversight

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Acronyms and Abbreviations

Introduction

Objective

We conducted this review to determine the validity of a complaint that a Tinker Air Force Base contracting officer agreed to pay a 22-percent unallowable markup factor on a foreign military sales (FMS) contract. According to the complainant, the contracting officer agreed to pay the 22-percent markup even though Defense Contract Audit Agency (DCAA) and a Defense Contract Management Agency (DCMA) attorney recommended that the contracting officer disallow the markup.

See Appendix A for details of our scope and methodology.

Background

Foreign Military Sales

The FMS program is the U.S. Government method for transferring defense articles, services, and training to other sovereign nations and international organizations approved to participate in the program. Under the program, the U.S. Government procures the defense articles and services on behalf of the foreign customer. Sales under the FMS program totaled \$25.2 billion in FY 2010 and \$28.3 billion in FY 2011. In accordance with Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 225.73, "Acquisition for Military Sales," FMS contracts are subject to the same acquisition regulations as DoD contracts (including the Federal Acquisition Regulation [FAR] and the DFARS).

Tinker Air Force Base–Oklahoma City Air Logistics Center

The Oklahoma City Air Logistics Center, Tinker Air Force Base, Oklahoma, is one of the largest units in the Air Force Materiel Command. The Center performs maintenance, repair and overhaul of military aircraft for the Navy, Air Force, Air Force Reserve, Air National Guard, and countries approved to participate in FMS program. Additionally, the Center is responsible for the maintenance, repair, and overhaul of several Navy and Air Force airborne accessory components, and the development and sustainment of a diverse range of operational flight programs, test program sets, automatic test equipment, and industrial automation software.

A Tinker Air Force Base contracting officer negotiated the FMS contract addressed in this report on behalf of the foreign military customer. In January 2013, the contracting officer

resigned from his position at Tinker Air Force Base and is now employed at another federal Agency outside the DoD.

Defense Contract Management Agency

DCMA is the DoD Component that works directly with Defense suppliers to help ensure that DoD, Federal, and allied government supplies and services are delivered on time and at projected cost, and meet all performance requirements.

During the negotiation of the FMS contract, a DCMA attorney provided legal support in connection with the FMS contract addressed in this report.

Defense Contract Audit Agency

DCAA performs contract audits and provides accounting and financial advisory services in connection with the negotiation, administration and settlement of DoD contracts and subcontracts. DCAA operates under the authority, direction and control of the Under Secretary of Defense (Comptroller)/Chief Financial Officer.

The Tinker Air Force Base contracting officer requested that DCAA perform an audit of the FMS proposal discussed in this report.

Finding

Payment of an Unallowable Markup on a Foreign Military Sales Contract

We substantiated the complainant's allegation that a Tinker Air Force Base contracting officer inappropriately agreed to pay a 22-percent unallowable markup factor proposed by a DoD contractor on an FMS contract even though DCAA and a DCMA attorney recommended that the contracting officer disallow the markup. As a result, the foreign military customer paid an additional \$18.3 million in unallowable profit under the FMS contract. The additional profit was unallowable according to FAR 31.205-26(e), "Material Costs," which requires that material cost transferred between affiliated companies be based on cost (excluding profit). In addition, the contracting officer failed to adequately explain why he chose not to adopt the DCAA and DCMA recommendation to disallow the markup factor.

FMS Contract Details

In February 2004, a Tinker Air Force Base contracting officer received a prime contractor's¹ proposal to furnish repair parts for the F-100 aircraft. The proposed costs for part of the materials were based on an estimate from a subcontractor, which included a 22-percent markup factor. The estimated subcontractor material costs, excluding the 22-percent markup factor, were based on a negotiated parts list agreement between the subcontractor and the Air Force. The 22-percent markup factor represented proposed profit that was in addition to profit built into the subcontractor parts list agreement with the Air Force. To obtain advice on whether the 22-percent markup was allowable, the contracting officer requested that a DCMA attorney review the relationship between the prime contractor and subcontractor to determine if they were affiliated companies. In addition, the contracting officer asked DCAA to audit the FMS proposal, including the 22-percent markup.

In a May 2004 legal opinion, the DCMA attorney concluded that the prime contractor and subcontractor were affiliated companies. On June 28, 2004, DCAA reported that the markup was unallowable based on FAR 31.205-26(e), which requires that material costs transferred between affiliated companies under a common control be based on costs

¹ A prime contractor refers to a DoD contractor that has a direct contractual relationship with the Government to carry out the terms of the contract. Unless prohibited, the prime contractor can elect to employ a subcontractor to perform part of the tasks stipulated in the contract.

incurred. The DCAA audit report referenced the DCMA legal opinion in support of its determination that the prime contractor and subcontractor were affiliated.

In July 2004, the Tinker Air Force Base contracting officer entered into an agreement with the prime contractor for the “base” year portion of the FMS contract, allowing the 22-percent markup despite the DCMA legal and DCAA audit recommendations. In February 2005 and February 2007, the Tinker Air Force Base contracting officer exercised two additional option years under the FMS contract and again agreed to pay the 22-percent markup. Prior to the exercise of each option, DCAA reiterated its determination to the contracting officer that the markup was unallowable in accordance with FAR 31.205-26(e) and should be disallowed. In total, Tinker Air Force Base inappropriately agreed to pay an estimated \$18.3 million in additional profit associated with the 22-percent markup for the base year and the two option years.

See Appendix B for a listing of the chronology of events.

Markup Allowability and Affiliate Relationship

DFARS 225.7303-2(b), “Cost of Doing Business with a Foreign Government or an International Organization,” states, “Costs not allowable under FAR Part 31 are not allowable in pricing FMS contracts....”

FAR 31.205-26(e) states:

Allowance for all materials, supplies, and services that are sold or transferred between any divisions, subdivisions, subsidiaries, or affiliates of the contractor under a common control shall be on the basis of cost incurred in accordance with this subpart.

Based on our review of the relationship between the prime contractor and subcontractor, these companies were clearly affiliated under a common control. According to FAR 2.101, “Affiliates” means:

associated business concerns or individuals, directly or indirectly—
(1) Either one controls or can control the other, or
(2) A third party controls or can control both.

As of May 2004, the subcontractor owned the majority (59 percent) of equity interest in the prime contractor. Furthermore, the subcontractor was the only party that could block the vast majority of prime contractor management decisions. The unilateral ability

to block management decisions equated to an indirect exercise of control. Because the subcontractor had control over the prime contractor, they were affiliated and the subcontractor's material costs should have been limited to the costs incurred.

Accordingly, for the base year and the two option years, the Tinker Air Force Base contracting officer did not comply with FAR 31.205-26(e) when he agreed to pay the 22 percent mark-up factor. The markup resulted in the FMS customer paying \$18.3 million in unallowable profit under the contract. The FMS contract is firm fixed-price in which the FMS customer agreed to pay the negotiated contract value irrespective of the costs the contractor incurred or the profits it received. Nonetheless, Tinker Air Force Base contracting personnel have an obligation to take all practicable steps to recover the unallowable profit that the contracting officer should not have paid to the DoD contractor.

We do not know the extent to which Tinker Air Force Base might have agreed to pay an unallowable markup on other FMS or DoD contracts. Tinker Air Force Base should review its current practices for negotiating contracts involving affiliated companies and establish quality assurance procedures to help ensure that contracting officers limit negotiated material costs transferred between companies to the costs incurred.

Inadequate Price Negotiation Memorandum

The price negotiation memorandum is a vital part of the contract file because it serves as the primary source of documenting the contracting officer's basis for establishing a fair and reasonable price. It also shows the actions the contracting officer took to address any specialist recommendations, such as legal and audit recommendations. FAR 15.405(a), "Price Negotiation," states in part: "...when significant audit or other specialist recommendations are not adopted, the contracting officer should provide rationale that supports the negotiation result in the price negotiation documentation." Although the DCMA attorney and the DCAA auditor recommended that the contracting officer disallow the 22-percent markup, the contracting officer still agreed to pay it and did not document adequate rationale in the price negotiation memorandum for doing so.

In the price negotiation memorandum, the Tinker Air Force Base contracting officer did not dispute the DCMA or DCAA conclusion that the subcontractor and prime contractor were affiliated, or that the 22-percent markup factor was unallowable. In fact, the price negotiation memorandum reflects that the contracting officer initially attempted to negotiate the elimination (or reduction) of the markup, but the prime contractor would not agree to it. Ultimately, the contracting officer agreed to pay the markup and documented the following two explanations for this action in the price negotiation memorandum.

- The FMS contract has “political implications” and the FMS customer is anxious to execute the contract in order to maintain military capability.
- After factoring in the “harsh environmental conditions,” the proposed material costs (inclusive of the 22-percent markup) are considered reasonable.

However, the price negotiation memorandum does not adequately explain what the “political implications” were or provide evidence to support any political implications. The price negotiation memorandum also did not explain, or provide evidence to support, how the disallowance of the 22-percent markup would impact the FMS customer’s military capability. When we interviewed the contracting officer, he could not clarify what he meant by “political implications” or provide evidence of the FMS customer’s concerns over maintaining military capability.

In addition, the contracting officer could not adequately support the rationale involving the “harsh environmental conditions” cited in the price negotiation memorandum. The price negotiation memorandum refers to a technical analysis written by a Tinker Air Force Base engineer that concluded, according to the contracting officer, the proposed price (inclusive of the 22-percent markup) was reasonable after factoring in the harsh environmental conditions. However, we reviewed the technical analysis and found that it did not address price reasonableness or the 22-percent markup. In addition, we interviewed the engineer who confirmed that his analysis covered only the quantities and types of material proposed by the subcontractor, not price reasonableness or the 22 percent markup. If the environmental conditions were severe, the subcontractor would have incorporated additional quantities in its proposal to account for spoilage associated with those conditions. The environmental conditions would not have impacted the material unit price. Therefore, the contracting officer’s use of the engineer’s technical analysis to justify payment of the 22-percent markup was inappropriate.

It should be noted that if extraordinary circumstances did exist which necessitated the payment of the 22-percent markup; the contracting officer should have requested a deviation in accordance with the procedures outlined in FAR 1.4, “Deviations,” and FAR 31.101, “Objectives.” The contracting officer does not have the authority to reimburse an expense that is unallowable according to the FAR, absent a properly approved FAR deviation. Tinker Air Force Base should consider corrective and/or administrative action for the failure of the contracting officer to comply with the FAR and include adequate rationale for not adopting the specialist recommendations.

Tinker Air Force Base should implement quality assurance procedures to help ensure that contracting officers document adequate rationale in the price negotiation memorandum

when they do not adopt audit and other specialist recommendations, in accordance with FAR 15.405(a). Tinker Air Force Base should also consider providing training on the procedures and instructions for requesting deviations from the FAR, as outlined in FAR 1.4 and FAR 31.101.

Recommendations, Management Comments, and Our Response

Recommendation 1

We recommend that the Deputy Assistant Secretary for Contracting, Office of the Assistant Secretary of the Air Force for Acquisition:

Assess Tinker Air Force Base practices for negotiating contracts between affiliated companies and establish quality assurance procedures to help ensure that contracting officers limit negotiated material costs transferred between affiliated companies to the cost incurred, in accordance with Federal Acquisition Regulation 31.205-26(e).

Air Force Comments

The Deputy Assistant Secretary agreed and stated that Tinker Air Force Base personnel performed a review of foreign military sales contracts with affiliated companies and concluded that the acceptance of an unallowable markup on an FMS contract was an isolated incident. Also, the Director of the Air Force Sustainment will create and implement additional training on affiliated companies to ensure that contracting personnel understand the regulations and requirements. The Air Force established additional levels of oversight to prevent similar errors.

Our Response

The management comments are responsive, and no additional response to this recommendation is required.

Recommendation 2

Implement quality assurance procedures to ensure that Tinker Air Force Base contracting officers adequately explain the rationale for not adopting audit specialist and other specialist recommendations in the price negotiation memorandum, as Federal Acquisition Regulation 15.405(a) requires.

Air Force Comments

The Deputy Assistant Secretary agreed and stated that Tinker Air Force Base has included the topic of not adopting specialist recommendations in quarterly training provided to contracting personnel. The training places specific emphasis on the requirement for documenting rationale when not adopting the recommendations of audit or other specialists.

Our Response

The management comments are responsive, and no additional response to this recommendation is required.

Recommendation 3

Provide training on the procedures and instructions for requesting deviations outlined in Federal Acquisition Regulation 1.4 and 31.101.

Air Force Comments

The Deputy Assistant Secretary agreed and stated that Tinker Air Force Base will implement refresher training on how to process individual FAR deviations when circumstances are determined appropriate and consistent with the DFARS.

Our Response

The management comments are responsive, and no additional response to this recommendation is required.

Recommendation 4

Consider appropriate corrective and/or administrative action for agreeing to pay for an unallowable markup factor and failing to document adequate rationale for not adopting audit and legal specialist recommendations.

Air Force Comments

The Deputy Assistant Secretary agreed but is unable to take further action. The contracting officer associated with this specific contract resigned in January 2013. The Air Force has no purview to take corrective or administrative action against this individual because he is no longer employed by the Air Force.

Our Response

The management comments are responsive, and no additional response to this recommendation is required. We agree that the Air Force is unable to take corrective or administrative action because the individual is no longer a DoD employee.

Recommendation 5

Direct Tinker Air Force Base contracting personnel to take all practicable steps to obtain recoupment of \$18.3 million profit that the contracting officer had no authority to pay based on FAR 31.205-26(3).

Air Force Comments

The Deputy Assistant Secretary agreed with the DoD Office of Inspector General's concern; however, the overpayment is impracticable to recover. The Air Force would take practicable steps to recover the \$18.3 million; however the contract is administratively closed and there are no unliquidated obligations to recover the funds. Air Force legal counsel sees no practicable way to recover these funds.

Our Response

The management comments are responsive, and no additional response to this recommendation is required.

Appendix A

Scope and Methodology

We conducted this review in accordance with the Council of the Inspectors General on Integrity and Efficiency “Quality Standards for Inspection and Evaluation.” To determine the validity of the complaint addressed in this report, we:

- interviewed appropriate Government personnel at Tinker Air Force Base, DCMA and DCAA;
- obtained and reviewed files and correspondence involving the FMS contract from Tinker Air Force Base, DCMA, and DCAA; and
- reviewed Tinker Air Force Base contracting official actions to determine if they complied with applicable procurement regulations, DoD Instructions, and agency procedures.

We interviewed the Tinker Air Force Base contracting officer, engineer, attorney, and other Tinker Air Force Base procurement representatives involved in the FMS contract. In addition, we spoke to DCAA personnel who participated in auditing the FMS proposal. We placed some of the interviewees under oath, we recorded the interviews, and we obtained a transcription of the interviews. In addition, our review included an evaluation of applicable regulations and agency procedures. We also examined written communications and contract files associated with the FMS contract.

We performed this review from April 1, 2012, through January 11, 2013. We received the complaint in FY 2009. We substantially delayed our review of the complaint to work on several other high-priority DoD Hotline complaints and high-risk reviews of DCAA.

Use of Computer-Processed Data

We did not rely on any computer-processed data as part of our review.

Prior Coverage

During the last 5 years, the DoD Inspector General did not conduct any reviews involving FMS contracts that were negotiated by Tinker Air Force Base.

Appendix B

Chronology of Events

Date	Description
February 25, 2004	As requested, the prime contractor submitted a proposal to provide spare parts for the F-100 aircraft.
March 24, 2004	The Tinker Air Force Base contracting officer requested that DCAA review the FMS proposal, including the subcontractor-proposed 22-percent markup factor.
May 26, 2004	The contracting officer requested that DCMA determine if the prime contractor and subcontractor were affiliated.
May 28, 2004	The DCMA attorney issued its legal opinion advising the contracting officer that the prime contractor and subcontractor were affiliated because the subcontractor had control over the prime contractor.
June 28, 2004	DCAA issued its audit report on the FMS proposal. DCAA questioned the markup factor as unallowable per FAR 31.205-26(e), since the prime contractor and subcontractor were affiliated.
July 29, 2004	Tinker Air Force Base entered into an agreement with the prime contractor for the “basic” year of the FMS contract, allowing the 22-percent markup factor.
August 24, 2005	DCAA issued its audit report on the first option year of the FMS contract, again questioning the markup factor as unallowable.
February 2, 2006	Tinker Air Force Base modified the FMS contract to exercise the first option year under the contract. The first option year included the 22-percent markup factor.
December 11, 2006	DCAA issued its audit report addressing the second option year of the FMS contract, reiterating its opinion that the markup factor was unallowable.
February 21, 2007	Tinker Air Force Base exercised the second option year of the FMS contract. The negotiated amount for the second option year included the 22-percent markup factor.
December 17, 2008	DoD IG received the complaint addressed in this report.
January 2013	The Tinker Air Force Base contracting officer who agreed to pay the 22-percent markup resigned from the Air Force.

Management Comments

Air Force Comments



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

09 APR 2013

OFFICE OF THE ASSISTANT SECRETARY

MEMORANDUM FOR DEPARTMENT OF DEFENSE INSPECTOR GENERAL
ATTN: PROGRAM DIRECTOR, POLICY AND OVERSIGHT

FROM: SAF/AQC
1060 Air Force Pentagon
Washington, DC 20330-1060

SUBJECT: DoDIG Office of Inspector General Project No. D2009-DIPOAI-0022.002
"Complaint Regarding Tinker Air Force Base Agreement to Pay an Unallowable Markup on a Foreign Military Sales Contract"

Management comments in response to this audit are attached. If you have any questions or concerns regarding our comments, please contact Mr. Stephen Larson, SAF/AQCP, at (571) 256-7079, stephen.larson@pentagon.af.mil.

Wendy M. Masiello
WENDY M. MASIELLO, Maj Gen, USAF
Deputy Assistant Secretary (Contracting)
Assistant Secretary (Acquisition)

Attachment:
Management Comments

DoD Office of Inspector General Project No. D2009-DIPOAI-0022.002
“Complaint Regarding Tinker Air Force Base Agreement to Pay an Unallowable Markup on a Foreign Military Sales Contract”

We recommend that the Deputy Assistant Secretary for Contracting, Office of the Assistant Secretary of the Air Force for Acquisition:

Audit Results 1 – Assess practices for negotiating contracts between affiliated companies.

1. We recommend that the Deputy Assistant Secretary for Contracting, Office of the Assistant Secretary of the Air Force for Acquisition, assess Tinker Air Force Base practices for negotiating contracts between affiliated companies and establish quality assurance procedures to help ensure that contracting officers limit negotiated material costs transferred between affiliated companies to the costs incurred, in accordance with the Federal Acquisition Regulation 31.205-26(e).

DAS(C) Comment Concur: Contracting personnel from Air Force Sustainment Center (AFSC/PK) performed review; and found no other contracts at Tinker AFB where negotiated markups were allowed on material costs associated with affiliated companies. It appears this was an isolated incident where the foreign government mandated the source and the contracting officer failed to adequately document the price negotiation memorandum or seek the appropriate FAR Deviation. We do not believe this is a systemic issue across the contracting enterprise at Tinker AFB. However, Director, Air Force Sustainment Center (AFSC/PK) will create and implement additional training on the topic of “affiliated contractors” to ensure contracting personnel understand the regulations and requirements; with specific emphasis on the limitation of profit on material costs transferred between the affiliated companies (IAW FAR 31.205-26(e)). Importantly, subsequent to this action, Air Force established Business and Contract Clearances, Multifunctional Independent Review Teams (MIRTs), and OSD Peer Reviews (at appropriate dollar threshold), requiring another level of independent oversight to help preclude similar errors occurring.

Audit Results 2 – Implement QA procedures when not adopting audit recommendations.

2. We recommend that the Deputy Assistant Secretary for Contracting, Office of the Assistant Secretary of the Air Force for Acquisition, implement quality assurance procedures to ensure that Tinker Air Force Base contracting officers adequately explain the rationale for not adopting audit specialist and other specialist recommendations in the price negotiation memorandum, as Federal Acquisition Regulation 15.405(a) requires.

DAS(C) Comment Concur: Contracting personnel in Air Force Sustainment Center (AFSC) and Air Force Life Cycle Management Center (AFLCMC) at Tinker AFB have already included this topic in current pricing training provided to the contracting workforce on a quarterly basis. Price Negotiation Memorandum training places specific emphasis on the requirement for explanation of the rationale behind a Contracting Officer’s decision to not adopt/accept the

recommendations of audit or other specialists IAW FAR 15.405(a). AFSC and AFLCMC contracting personnel at Tinker AFB will continue to provide quarterly refresher training specific to this topic.

Audit Results 3 – Provide training for requesting deviations from FAR.

3. We recommend that the Deputy Assistant Secretary for Contracting, Office of the Assistant Secretary of the Air Force for Acquisition, provide training on the procedures and instructions to request deviations outlined in Federal Acquisition Regulation 1.4 and 31.101.

DAS(C) Comment Concur with providing training and requesting deviation when appropriate:

appropriate: Contracting Leaders in AFSC and AFLCMC at Tinker AFB will create and implement refresher training on how to process individual FAR deviations when the circumstances are determined appropriate, consistent with DFARS 201-402(1)(v). Clearly, this case serves as an example of what would not be approved.

Audit Results 4 – Consider appropriate corrective and/or administrative action.

4. We recommend that the Deputy Assistant Secretary for Contracting, Office of the Assistant Secretary of the Air Force for Acquisition, consider appropriate corrective and/or administrative action for agreeing to pay for an unallowable markup factor and failing to document adequate rationale for not adopting audit and legal specialist recommendations.

DAS(C) Comment Concur with the recommendation but unable to take any further action:

action: The Contracting Officer associated with this specific contract resigned from the Air Force in January 2013. The Air Force has no purview to take corrective or administrative action against this individual since he is no longer employed by the Air Force.

Audit Results 5 – Take all practical steps to obtain recoupment of \$18.3 million profit.

5. We recommend that the Deputy Assistant Secretary for Contracting, Office of the Assistant Secretary of the Air Force for Acquisition, direct Tinker Air Force Base contracting personnel to take all practicable steps to obtain recoupment of \$18.3 million profit that the contracting officer had no authority to pay based on FAR 31.205-26(e).

DAS (C) Comment Concur with DoD OIG concern, but impracticable to recover overpayment:

overpayment: While the Air Force would take practicable steps to recover \$18.3 million; the contract referenced in this report is complete and administratively closed. The MOCAS system has moved all records pertaining to this contract to Administrative Closeout Section 9 with no unliquidated obligations. The contract is no longer in the DFAS system and has dropped from the JO41 record keeping system. After consultation with our legal counsel, we see no practicable way to recover these funds.

Acronyms and Abbreviations

- DCAA** Defense Contract Audit Agency
DCMA Defense Contract Management Agency
DFARS Defense Federal Acquisition Regulation Supplement
FAR Federal Acquisition Regulation
FMS Foreign Military Sales



Whistleblower Protection

U.S. DEPARTMENT OF DEFENSE

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Public.Affairs@dodig.mil; 703.604.8324

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